UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/103
24 March 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 20 (d)

RIGHTS OF THE CHILD

Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their eradication

Report of the working group on its fourth session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. ORGANIZATION OF THE SESSION	3 - 16	3
A. Opening and duration of the session	3	3
B. Election of the Chairman-Rapporteur	4	3
C. Organization of work	5 - 6	3
D. Participation	7 - 15	4
E. Documentation	16	4

CONTENTS (continued)

	Paragraphs	Page
II. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL	17 - 92	5
A. Chapter II: Definitions	23 - 54	6
B. Chapter IV: Penalization of offenders and protection of [children] [child victims]	55 - 71	12
C. Chapter VI: Prevention, assistance and compensation	72 - 85	15
D. Chapter VII: Information, education and participation	86 - 92	17
III. DEBATE ON THE WORKING METHODS OF THE WORKING GROUP .	93 - 108	18
Annex: Draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		21
Part 1: Texts resulting from debates held by the working group at its fourth session		21
Part 2: Texts left from the previous session for consideration by the working group at its next session		23

Introduction

1. The Commission on Human Rights, in paragraph 9 (b) of its resolution 1997/78, requested its open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to meet for a period of two weeks, or less if possible, prior to the fifty-fourth session of the Commission to pursue its mandate in order to finalize the draft optional protocol before the tenth anniversary of the Convention on the Rights of the Child.

2. The Economic and Social Council, in its decision 1997/281, authorized the working group to meet for a period of two weeks prior to the fifty-fourth session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The session of the working group was opened by a representative of the High Commissioner for Human Rights, who made a statement. During the session, from 19 to 30 January 1998, the working group held seven meetings in plenary, on 19, 21, 28 and 30 January and 19 March 1998.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 19 January 1998, the working group re-elected Mr. Iván Mora Godoy (Cuba) Chairman-Rapporteur. At its 7th meeting, on 19 March 1998, Mrs. Laura Dupuy (Uruguay) was designated to replace the Chairman for the purpose of the adoption of the report.

C. Organization of work

5. At the first meeting, on 19 January 1998, the Chairman-Rapporteur recalled that all opinions on the draft optional protocol had already been expressed by the participants at previous sessions of the working group. The reports on their first to third session (E/CN.4/1995/95, E/CN.4/1996/101 and E/CN.4/1997/97) submitted at the Commission on Human Rights reflect these views expressed by the delegations. He therefore proposed that, in order to save time and to be able to favourably respond to the request of the Commission on Human Rights to conclude the drafting of the protocol before the tenth anniversary of the Convention on the Rights of the Child, the working group should avoid reopening a general debate and should concentrate on drafting issues.

6. The Chairman-Rapporteur then proposed that the work be conducted in an informal drafting group and that consideration should first be given to the second part of the annex that refers to the texts which could not be considered at previous sessions due to lack of time. He also stated that, if the working group agreed, some plenary meetings would be held to allow the participants to express their opinions on the texts discussed during the meetings of the informal drafting group.

D. Participation

7. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Bangladesh, Brazil, Canada, Chile, China, Cuba, Czech Republic, Denmark, El Salvador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russian Federation, South Africa, Sri Lanka, Sudan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

8. The following States non-members of the Commission were represented by observers: Australia, Belgium, Colombia, Costa Rica, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, Iran (Islamic Republic of), Netherlands, New Zealand, Nigeria, Norway, Portugal, Romania, Slovakia, Sweden, Syrian Arab Republic and Turkey.

9. The following non-member States of the United Nations were also represented by observers: Holy See and Switzerland.

10. The following United Nations body was represented by an observer: United Nations Children's Fund.

11. The following specialized agency was represented by an observer: International Labour Organization.

12. The following intergovernmental organization was represented by an observer: European Commission (European Union).

13. The International Federation of Red Cross and Red Crescent Societies was represented by an observer.

14. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: International Council of Women, Coalition Against Trafficking in Women, Defence for Children International, International Federation of Human Rights Leagues and International Service for Human Rights.

15. The following other non-governmental organization was represented by an observer: International Inner Wheel.

E. Documentation

16. The working group had before it the following documents:

E/CN.4/1998/WG.14/1	Provisional agenda
E/CN.4/1998/WG.14/2 and Add.1	Comments on the report of the working group - Note of the Secretary-General

E/CN.4/1997/97	Report of the working group on its third session - Question of a draft optional protocol to the Convention on Rights of the Child on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication
E/CN.4/1997/95	Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas-Santos
E/CN.4/Sub.2/1997/11	Report of the Secretary-General on the implementation of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, submitted pursuant to Sub-Commission resolution 1996/12
A/51/385	Letter dated 19 September 1996 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General - Annex - Declaration and Agenda for action adopted by the Congress against Commercial Sexual Exploitation of Children, Stockholm, from 27 to 31 August 1996.

II. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL

17. In accordance with the proposal made by the Chairman-Rapporteur at the first plenary meeting, and after having held an informal drafting group, the working group held a general debate in plenary meetings on 21 and 28 January 1998 to enable delegations to present their views and opinions on the specific provisions discussed in the drafting group. The present chapter reflects the opinions expressed by some delegations on the text of the articles of the draft protocol which were considered in the drafting group.

18. During the discussion, it was clearly recalled that all States reserve the right to reconsider any issue of the draft optional protocol.

19. The observer for the International Labour Organization (ILO) expressed the Organization's continuing interest in discussions of the draft optional protocol given that its mandate covered certain aspects of child labour related to the sale of children, child prostitution and child pornography. She emphasized that ILO conventions and recommendations on child labour covered any form of work performed by a child, including forced labour or where there was no formal employment relationship, such as in the cases of child prostitution and child pornography. She also reaffirmed the aim of the organization to adopt in June 1999 new international labour instruments with new standards focused upon addressing the exploitation of children, including

the use of children in conditions of forced labour or slavery, their employment in dangerous and hazardous work, as well as the sexual exploitation of children for commercial purposes.

20. ILO had prepared a set of proposed conclusions, based on the replies received by member Governments, to a questionnaire on the contents of the new instruments. These proposed conclusions were as follows: a State which ratified the future convention would be required to take measures to secure the immediate suppression of all extreme forms of child labour, including "the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances". The ratifying State should also take all necessary measures to ensure effective enforcement of the convention, "including the provision and application of criminal penalties". A report on the proposed conclusions would be published shortly. In conclusion, the observer emphasized that ILO was particularly interested in the outcome of the working group's work on definitions: these definitions should in fact conform fully to those contained in other international instruments.

21. The observer for the United Nations Children's Fund (UNICEF) reminded the working group of the deep concern of the international community about sexual exploitation and related issues, including contemporary forms of slavery with specific reference to children; she hoped that the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights would give renewed impetus to the protection of the human rights of children.

22. Emphasizing that the Convention on the Rights of the Child was an essential reference on these matters, the observer for UNICEF highlighted several points that were felt to be of particular concern. These points were: firstly, that new provisions to be incorporated in the optional protocol should strengthen and complement the Convention on the Rights of the Child, and not reaffirm existing standards or undermine them. Secondly, the best interests of the child should always be the primary consideration, and efforts should be aimed at preventing vulnerable groups of children from becoming the most common victims of such practices; it was important to acknowledge that gender discrimination could place girls at greater risk of sexual exploitation, and to recognize their specific needs for rehabilitation. Thirdly, child prostitution and pornography were contemporary forms of slavery and the child had a right to protection, in the various forms it could take. Children should be seen as victims and the priority issue was to ensure that criminal sanctions were established to punish individuals and organizations which induced, coerced or used children for any form of sexual exploitation. In addition, adequate programmes ensuring recovery and rehabilitation of the child, as well as compensation measures should be promoted. Furthermore, the observer for UNICEF stressed the need for national legislation to incorporate a provision on the extraterritoriality of these offences.

A. Chapter II: Definitions

23. The working group examined the chapter of the draft optional protocol dealing with the definitions which the informal drafting group could accept.

24. Despite divergent opinions regarding the focus and the scope of the optional protocol, all participants agreed on the urgent need for action to address the questions raised in the draft text. They also insisted on the necessity of having a finalized draft as soon as possible.

25. Some participants felt that the working group was not making enough progress and that differences on definitions could not yet be overcome. They expressed their concern with regard to a further delay in the adoption of the draft optional protocol.

26. However, other participants expressed their appreciation of the positive evolution of the negotiations and noted with satisfaction that the delegations which had initially been opposed to having definitions in the text of the protocol were reconsidering their position and were actively participating in the drafting of these definitions.

1. Sale of children

27. With regard to the definition of the sale of children, the representative of Germany expressed his support for the Dutch proposal as contained in the report of the working group on its third session (E/CN.4/1997/97, annex, Part 1, chapter II [Article 1 ...]) which left the responsibility for the definition of sale of children, child prostitution and child pornography to States parties and because the proposal was more generic. 1/ This was supported by the representative of Japan and the observer for New Zealand. In that regard, the observer for the Netherlands wished to include in the annex to the present report, as a footnote, the alternative proposal of the definition already submitted by her delegation; this definition could be used as an alternative if no consensus were to be reached on the chapter of the draft optional protocol on definitions. However, as other delegations were in favour of including a definition in the optional protocol, the representative of Germany expressed his delegation's preference for the second option for the definition of the sale of children (see the annex to the present report), as a basis for future work. This position was supported by the observer for New Zealand.

28. The representative of Japan proposed that the definition of sale of children should focus on the sale of children for the purpose of sexual exploitation and said that his delegation would rather work on the basis of the second option for the definition of the sale of children. This position was shared by the delegations of Australia, Belgium, Canada, Finland, France, Italy, the Netherlands, Switzerland and the United States of America.

29. The above-mentioned delegations were of the view that a definition with a limited scope would help them to reach a consensus text more rapidly and would result in an instrument with common minimum standards.

30. The observer for Australia outlined the reasons for supporting a narrower scope for the protocol. While acknowledging the seriousness of the

---

1/ The text of the Dutch proposal is also reproduced in the annex to the present report as [Article 1 ...] under Part 1, chapter II.

sale of children for non-sexual forms of exploitation (for example, for commercial intercountry adoption or for non-sexual forms of exploitative child labour), the observer indicated that many of these issues had been or were currently being addressed in other international instruments or fora within the United Nations system; these included the International Labour Organization and the World Health Organization. The observer therefore suggested that elaboration of the proposed instrument should be carefully targeted to address the present gap in international standards regarding sexual exploitation of children, thereby ensuring that the protocol was capable of being effectively implemented. In supporting a narrower scope for the protocol, the observer for Australia was not suggesting that other forms of sale were legitimate; in fact, no sale of a child was legitimate. The delegations of Canada, France, Italy, Japan, the Netherlands and New Zealand concurred with this reasoning.

31. The representative of Italy recalled that the question of the exact mandate of the working group and the scope of the optional protocol was not yet solved and that it should be carried out as a priority.

32. The representative of France, although supportive of the second option for the definition of the sale of children, expressed his reservation with regard to defining sale as "buying and selling" and was of the opinion that a better wording could be found. He would prefer the wording used in the first version which referred to "any kind of transaction or illicit transfer". His concerns were supported by the delegations of Australia, Switzerland and the United States of America.

33. The representative of the Russian Federation wished to draw the attention of the working group to the danger of limiting the definition of the sale of children to sexual exploitation and to the fact that, given that articles 34 and 35 of the Convention on the Rights of the Child had been used as a basis for the relevant provisions of the optional protocol, article 35 was not limited in any way to sexual exploitation of children. He also recalled that the mandate of the working group did not limit the concept of the sale of children. This position was supported by the delegations of Argentina, Chile, Colombia, Costa Rica, Cuba, Guatemala and Uruguay. The observer for Costa Rica joined the large group of countries which supported the idea that, to ensure effective legal protection of children, the definition of the sale of children should include the words "for any purpose or in any form". He also considered it to be of the utmost importance that the protocol should contain a definition, inter alia, of sex tourism.

34. The representative of Mexico underlined the complexity of the task of the working group and insisted on the need to focus on the mandate of the group because its work should be guided by the principle of the best interest of the child. She therefore proposed, as a basis for future work, a definition which read as follows: "Sale of children means any kind of transaction where the child is the object, regardless of the form it takes and whether any compensation is involved, for [the purpose of sexual exploitation] [whatever purpose]".

35. The observer for Switzerland thought that this definition could serve as a good working basis for reaching a compromise wording on the sale of children at the next meeting of the working group.

36. The representatives of Argentina, Chile, Cuba, El Salvador, Guatemala and Uruguay and the observers for Colombia, Costa Rica and Egypt also recalled that article 35 of the Convention on the Rights of the Child must be used as the basis for the provisions of the optional protocol. They all expressed the need for the optional protocol to address and to criminalize all acts aiming at the violation of the rights of the child. The definition of the sale of children should, therefore, be as comprehensive and wide as possible. They expressed their preference for the first alternative of the definition of the sale of children as the basis for negotiation at the next session of the working group. The representative of Uruguay was of the view that the definition of the sale of children should also include the question of the person having any custody or control over a child. The observer for Colombia emphasized the inappropriateness of limiting the definition of the sale of children to one purpose or object, not only for the legal reasons given, but also because of the negative message that would be sent to the international community about the real will to safeguard children against these practices.

37. The observer for the Syrian Arab Republic insisted on the need for the protocol to have a clear and concise definition. She then proposed a text which read: "Sale of children means the act which seeks to make the child or any organ or part of the child's body the object of a commercial transaction for any purpose or any form".

38. The representative of China expressed the need for a broad definition of the sale of children which should also include the questions of trafficking and abduction. He was supported by the representatives of Cuba and Uruguay; the former also wished to include the issues of economic exploitation, organ transplant and illegal adoptions. The representative of China was in favour of an optional protocol which would reinforce existing mechanisms and provide better protection to children victims of such practices. He also stated that the time-frame for the adoption of this protocol and the harmonization of national legislation should not be used as a pretext to limit the scope of the optional protocol.

39. The representative of Uruguay felt that the optional protocol should be used in conjunction with other international instruments and mechanisms dealing with the protection of children. By way of example, she referred to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption which, in her opinion, exclusively addressed international adoptions without particular focus on illegal adoptions. The optional protocol, by addressing the question of illegal adoptions, could therefore complement the Hague Convention. She was supported by the delegations of Chile, China and Guatemala.

40. The representatives of Guatemala and Uruguay, supported by the representative of Argentina, wished to include in the present report a summary of the comments that the Special Rapporteur on the sale of children, child prostitution and child pornography had made to the informal drafting group. As such statements had been made in informal meetings, a decision was taken by

the Chairman not to include any reference to her interventions. Interested delegations could always consult the various reports submitted by the Special Rapporteur to both the Commission on Human Rights and the General Assembly.

2. Child prostitution

41. With regard to the definition of child prostitution, the observer for the Syrian Arab Republic proposed the following definition: "Child prostitution means engaging in any unlawful sexual acts with a child, or inciting, or rendering such acts attractive to the child". With regard to the definition contained in the annex, she also suggested the deletion of the square brackets around the word "unlawful" and that the words "sexual services" be replaced by the words "sexual activities" in accordance with the Convention on the Rights of the Child.

42. The representative of Chile proposed the deletion of the word "unlawful", as any sexual service of a child could not be lawful. He was supported by Argentina, Brazil, Canada, China, Costa Rica, Cuba, Egypt, Guatemala, Italy, the Islamic Republic of Iran and Uruguay. The representative of Uruguay recalled that the reference to the national law, in cases where the age of sexual consent was less than 18 years, would pose a problem when persons under 18 engaged in prostitution or pornography. However, the observer for Norway preferred to keep the word in square brackets in order to be consistent with the national legislation of her country. She was supported by the representatives of France and Germany. The representative of Chile also expressed his preference, in respect of the Spanish translation, for the word "compensation" (retribución) instead of "benefit" (beneficio). This opinion was shared by the delegations of Costa Rica and Guatemala. He suggested the deletion of the square brackets around the phrase "including in the context of child sex tourism". This was supported by the delegations of Argentina, Brazil, France, the Islamic Republic of Iran and Switzerland.

43. The observer for New Zealand, supported by the representative of Guatemala, suggested deleting the words "inducing" and "coercing". Her delegation did not have a strong feeling with regard to the word "unlawful" and proposed, in the interest of consensus, to use the wording based on the text of article 35 (a) of the Convention which referred to "unlawful sexual activity". She was supported by the representatives of France and Germany. The observer for Switzerland, while preferring the deletion of the word "unlawful" when referring to sexual services of a child, joined the consensus for the wording based on article 35 (a) of the Convention.

44. The representative of the United Kingdom expressed his delegation's preference for the words "sexual services"; however, he was ready to join the consensus on the wording based on article 35 (a) of the Convention. The representative of Cuba expressed the wish of her delegation to include in the definition the word "activities".

45. The representative of Japan expressed concern about the lack of clarity of words such as "facilitating" and "sexual services". The observer for Switzerland underlined the need to harmonize chapters II (Definitions)

and IV (Penalization) to avoid repetition. In this connection he proposed deleting the word "facilitating", which already appeared in chapter IV.

46. The representative of the United States of America also expressed concern about the words "inducing", "coercing" and "facilitating" given that the related criminal acts were covered by chapter IV. The representative of Italy was not in favour of putting into square brackets the words "obtaining" and "procuring" on which an agreement had been reached at the previous session of the working group.

47. With regard to the issue of child sex tourism, the representative of the United States of America drew the attention of the working group to the redundancy of the phrase "by a person, whether inside or outside that person's country of residence" and the phrase "including in the context of child sex tourism". He suggested the deletion of the former for the sake of consistency. His view was shared by the representatives of Canada, France and Japan. It was agreed to put both phrases into square brackets for further consideration at the next session.

3. Child pornography

48. The working group considered a text proposed jointly by the delegations of Australia and Portugal. All delegations accepted using this text as a basis for their future discussions and to include it in the annex to the present report.

49. The representative of Italy proposed the deletion of the words "for the purposes of commercialization/trading, dissemination or other illicit purpose" and, in the absence of a consensus, to put them between square brackets. "Production" and "possession" should be considered illicit because of the intrinsically illicit nature of the material, irrespective of any specific purpose. She was supported by the representatives of Argentina and El Salvador and by the observer for Switzerland. The representative of Chile expressed his concern with regard to the fact that the current definition did not cover the issue of possession of material. The representative of Canada suggested placing "or other illicit purpose" between square brackets, as a basis for future discussion of the need to address simple possession.

50. The observer for the Syrian Arab Republic proposed inserting after the words "sexual purpose", the phrase "inter alia, encouraging child prostitution, child pornography and child sex tourism". The representative of Cuba suggested replacing the Syrian text with "including in the context of child sex tourism". The representatives of Argentina, Chile and the United States of America, while agreeing on the need to cover international aspects of the practices condemned by the draft optional protocol such as child sex tourism, expressed their reservation to the formulation as proposed by the observer for the Syrian Arab Republic and amended by the representative of Cuba.

51. The representative of the United States of America, supported by the representative of Japan, proposed inserting between "sexual activity, or any" and "representation" the word "illicit". The representative of Chile objected to that proposal.

52. The representative of Japan drew the attention of the working group to the importance for his delegation of limiting child pornography to visual pornography and also requiring that a real child existed. Following a question from the representative of Germany, the view that the expression "depicted as engaged in" as used in the definition was not meant to cover forms of virtual pornography was widely supported. The representative of China expressed his concern, as child pornography was not limited to materials, that the current definition was too narrow and would need further study.

4. Child sex tourism

53. The representative of Italy expressed her satisfaction that a consensus had been reached with regard to the issue of child sex tourism. In informal meetings, it was decided that the international aspects of the practices condemned by the draft optional protocol, such as child sex tourism, would be covered in the definitions of child prostitution and child pornography, the preambular part and the chapter on penalization, pending a final decision on definitions. No agreement was reached on the manner in which this should be done.

54. The representative of Brazil, supported by the observer for the Syrian Arab Republic, requested that the text of the draft definition of child sex tourism as included in the annex to the working group's previous report (E/CN.4/1997/97) be mentioned in the present report pending final approval of the article on definitions. The text read as follows: "Child sex tourism means tourism organized with the intention to facilitate or effect [directly or indirectly] [the sale of children,] [child pornography], child prostitution or [any unlawful sexual practices]".

B. Chapter IV: Penalization of offenders and protection of [children] [child victims]

1. Penalization and prosecution

55. With regard to the first paragraph of the chapter, the observer for Colombia proposed replacing the word "activities" with "acts", since the phrase would otherwise imply that such conduct was punishable only when carried out in a systematic and repeated manner; that would be at variance with legal procedure and prevent an isolated act from being penalized. He further proposed including the words "related criminal acts" in the first clause of the paragraph to make an all-inclusive reference to any acts which mignt contribute to or be intimately connected with the practices condemned in the protocol. He was supported by the representatives of Cuba and China and the observer for Costa Rica; the latter also proposed replacing "activities" with "acts". The representative of China expressed his support for that proposal.

56. The observer for Egypt proposed that related criminal acts should become an aggravating circumstance if they were committed in order to facilitate an offence mentioned in the protocol.

57. The representative of Canada suggested that the optional protocol should use the wording of pertinent international instruments such as articles 4

and 5 of the Convention against Torture. She was supported by the representatives of Argentina, France and Italy and by the observers for Australia and Switzerland.

58. The representative of Argentina, basing himself on the text of a number of international conventions, was of the opinion that the optional protocol should refer to elements of criminalization such as incitement, attempt, participation and attempts to commit offences. His opinion was shared by the representatives of Canada, France, Italy and Uruguay and the observer for Switzerland.

59. The representative of China expressed his concern regarding the words "use of a child" and "knowing facilitation". He felt that would require further consideration and in-depth discussion at future sessions.

60. With regard to paragraph 1 bis, the representative of France and the observers for Australia and Portugal insisted on the importance of maintaining a reference to the liability of legal persons. They proposed keeping this paragraph in the annex of the present report. In that regard, the representative of France suggested that the text could read: "States Parties undertake, insofar as their internal law provides for the criminal liability of legal persons, to prosecute the above-mentioned acts when they are committed by legal persons".

61. With regard to the paragraph dealing with the protection of child victims, the representative of Uruguay, supported by the Islamic Republic of Iran and Italy, expressed her doubts as to whether this paragraph should be included under the section on protection of children. A decision could be taken after having drafted the whole of chapter IV.

62. The representatives of Argentina and Chile agreed that children victims of such practices should be protected and not be held responsible. However, a child who was not the object of exploitation or abuse, but who exploited and abused other children should be treated in consequence, according to the criminal responsibility established by the laws of each State. The representative of Argentina also proposed exempting from penalty parents who sold a child thinking that the child would be treated as an own child with no other illicit purpose, provided they cooperated with the justice system in clarifying the facts of the sale. The observer for Egypt was of the view that this issue should be discussed under the section dealing with protection and not the section on penalization. Mention was made of children who were themselves abusing other children and who should therefore be considered and treated as offenders subject to applicable rules of criminal responsibilities.

63. The observer for the Islamic Republic of Iran stated that it would not be fair to pass judgement on the responsibility of children victims of the practices condemned in the optional protocol unless important elements, inter alia, the culpability of the child victim, the definition of victims and the age of responsibility of a child, were clarified and defined. He also suggested that mention should be made of the legal system of the State.

64. The representative of Italy recalled the commitment made by States at the Stockholm Congress, i.e. not to hold liable children involved in sexual

exploitations who should be considered as the victims of such practices. The representatives of Cuba and Mexico insisted on the importance of adequately protecting children victims and stressed that the guiding principle of the optional protocol should be the best interest of the child. The observer for Australia, supported by the observer for New Zealand, encouraged the working group to continue to work in that direction in order to better protect children victims of sexual exploitation from any penalty for that exploitation. She also proposed replacing the wording "child victim" with the expression "children used in the practices condemned in the present protocol".

65. The representative of Chile proposed deleting the phrase "subject to the legal system of the State". He was supported by the representatives of Canada and Germany and the observers for Australia, Norway and Switzerland.

66. The observers for Egypt, the Islamic Republic of Iran and the Syrian Arab Republic proposed to keep the phrase "subject to the legal system of the State" without square brackets.

67. The representative of Canada and the observer for Switzerland were of the opinion that the word "ensure" should be reconsidered in the context of this paragraph. The observer for Switzerland was of the view that a new, more flexible formulation would permit the deletion of the words "subject to the legal system of the State", which voided the international obligation of all content.

68. With regard to paragraph 2, the observer for the Islamic Republic of Iran expressed his reservation with regard to the possible implications of the implementation of extraterritorial jurisdiction and of "the double criminality rule". He was of the opinion that the matter would need further consideration.

69. With regard to subparagraph (b) of paragraph 2, the representative of the United Kingdom expressed his support for the amendment proposed by the observer for the Netherlands. The amendment, as mentioned in footnote 3 of the annex to the present report, stressed the need to take into account "the double criminality rule". Although his delegation had some concerns with regard to subparagraph (c), he would not oppose a consensus.

70. The representatives of China and France and the observers for the Islamic Republic of Iran, the Syrian Arab Republic and Switzerland objected to the inclusion of "the double criminality rule" in the optional protocol.

71. The representative of China expressed a reservation regarding the amendment made by the observer for Norway, also included in footnote 3 of the annex. He suggested using the wording of article 5 (2) and (3) of the Convention against Torture. This view was supported by the representatives of Cuba and Italy and the observers for the Islamic Republic of Iran and Switzerland. The observer for Australia expressed his support for the inclusion of the wording of article 5 (2) and that further consideration should be given to the wording of article 5 (3).

C. Chapter VI: Prevention, assistance and compensation

72. The Chairman-Rapporteur suggested, for the sake of consistency, to use a standard phrase to refer to "sale of children, child prostitution and child pornography". It should read as follows: "practices condemned in the present protocol". There was general agreement to standardize this terminology. With regard to the three paragraphs contained in chapter VI, the working group considered the following summing-up by the Chairman-Rapporteur:

> (1) States parties shall adopt or strengthen, and implement relevant laws, social policies and programmes, [including those addressing the spiritual and moral needs,] to prevent the practices condemned in the present protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices [, and the international cooperation, whenever required, to prevent them].
>
> (2) States parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices condemned in the present protocol, as well as their full social reintegration, and their full physical and psychological recovery [these shall, inter alia, consist of medical, social, [economic] and legal assistance].
>
> (3) States parties shall ensure that all child victims of the practices condemned in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

73. The observer for Colombia expressed concern about the word "implement" in paragraph (1) of the Chairman-Rapporteur's recapitulation as the translation into Spanish might not confer the same meaning. The representative of the Russian Federation preferred keeping the word "implement" between square brackets.

74. The representative of Canada proposed the deletion, in paragraph (1), of the phrase "spiritual and moral needs" which had been proposed by the observer for the Islamic Republic of Iran. This view was supported by the delegations of Australia, Chile, Colombia, France, Germany, the Netherlands, New Zealand, Switzerland and the United States of America.

75. The observer for Nigeria expressed a preference for keeping "spiritual and moral needs". The delegation of the Islamic Republic of Iran stressed the need to keep such a reference, but was ready to accept another wording.

76. The delegation of Canada, supported by Australia, Italy, France, the Netherlands, New Zealand and the United States of America, said that reference to "international cooperation" towards the end of paragraph (1) should be deleted, as it would be considered in chapter V. The Australian delegation added that alternatively, it could remain in square brackets, on the understanding that it would be revisited once chapter V is finalized. The representative of China and the observer for Egypt disagreed and proposed to keep the last part of this paragraph within square brackets. This position

was shared by the delegations of Brazil, Costa Rica, the Russian Federation and Uruguay. The observers for Nigeria and the Syrian Arab Republic proposed to keep this phrase without square brackets.

77. With regard to paragraph (2), the representative of Canada proposed the deletion of the reference to "economic" assistance, because he believed that it was covered by the term "social". This was supported by the delegations of Australia, Chile, France and the Netherlands. Although she would have preferred the word "economic" to be retained, the representative of Cuba, with a view to achieving a consensus, interpreted such assistance as being included within social assistance and accepted that understanding.

78. The representative of China, supported by the observers for Egypt and the Syrian Arab Republic, considered it important to retain the reference to "economic" assistance. The observer for Nigeria proposed the deletion of the square brackets around the word "economic" while the delegation of France preferred to retain them.

79. The representative of Uruguay proposed to use the word "could" instead of "shall" at the end of paragraph (2); her position was shared by the delegation of the United States of America.

80. The Chairman-Rapporteur, along with the delegations of Peru and the Russian Federation, proposed to delete the final sentence of paragraph (2). In opposition to this, the observer for the Islamic Republic of Iran proposed to retain the square brackets around the last sentence.

81. Some delegations then expressed their views on certain specific wordings and a discussion subsequently took place. The representative of China suggested, for the sake of consistency, to use the same wording in the whole paragraph, either "practices" or "offences". The representative of the United States of America stated that his delegation would not object to using those wordings; however, he would prefer to have them within square brackets. His views were supported by the delegations of the Netherlands and New Zealand.

82. Following informal suggestions made by some representatives, the observer for Colombia expressed concern about using the phrase "forms of exploitation", and the representative of Chile was of the same opinion regarding the word "offences". The observer for Argentina suggested to replace "practices" with "offences".

83. With regard to paragraph (3), the representative of Canada proposed replacing "responsible" with "liable" as this would constitute more appropriate legal terminology. This opinion was supported by the delegations of Argentina, Cuba, Egypt, Germany, the Netherlands, Nigeria and the United States of America. The observer for New Zealand preferred to place the word "liable" within square brackets.

84. The representative of Argentina, supported by the delegations of Egypt and Italy, proposed to have the words "without discrimination" follow "to seek compensation". The delegations of the Netherlands and the Russian Federation preferred to see the phrase "without discrimination" either in the preamble or in a separate article.

85. The observer for Colombia felt that reference to the word "damages" was unnecessary, but would rather use the standard phrasing as agreed by the working group. The representative of Chile expressed reservations over the use of the word "damages".

D. Chapter VII: Information, education and participation

86. The Chairman-Rapporteur drew the attention of the working group to two amendments made by the observer for the Islamic Republic of Iran to the relevant paragraph 2/: one proposal was to add after "through information" the words "by all means, including mass media"; the other amendment was to add "preventive measures and" before the words "harmful effects". Those amendments should appear within square brackets.

87. The representative of the Russian Federation suggested adding the following text at the end of the paragraph: "Without prejudice to the freedom of expression, States Parties shall encourage the responsible participation of the mass media in the achievement of the objectives stated above"; this text should be considered at the next session of the working group.

88. If reference was to be made to the mass media in this paragraph, the representative of the United States of America and the observer for New Zealand expressed a willingness to consider the proposal made by the Russian delegation. They felt that the amendments read out by the Chairman and to be included between square brackets were not appropriate. The representative of Uruguay preferred to have a text without square brackets.

89. The representative of China stated that the mass media had an important role to play in the information and education of the public, in particular of children. He was supported by the observers for the Islamic Republic of Iran and the Syrian Arab Republic. The former recalled that his delegation had accepted to eliminate the two paragraphs it had proposed (see E/CN.4/1997/97, annex, chapter VII, "Article A" and "Article B") on the understanding that due mention would be made to the mass media and preventive measures.

90. The observer for the Netherlands proposed moving the paragraph under discussion to chapter VI dealing with prevention, assistance and compensation. The representative of Canada suggested inserting it after paragraph 1. These two proposals were supported by the representatives of France, Italy and the United States of America and the observer for New Zealand. It was therefore decided that the paragraph would become a new paragraph 2 under chapter VI (see the annex of the present report).

91. The observer for the Syrian Arab Republic recalled that her delegation had proposed to include in chapter VII the wording of articles 42 and 45 of the Convention on the Rights of the Child.

92. It was suggested and later decided that the inclusion of a text similar to article 42 would be considered under chapter VIII on other matters, and

---

2/ For the "relevant paragraph" as amended see annex, chapter VI, paragraph 2. See also paragraph 90 below.

that the role of specialized agencies and other United Nations organs as referred to in article 45 of the Convention would be considered under chapter V on international cooperation and coordination; these two topics would be discussed at the next session of the working group.

III. DEBATE ON THE WORKING METHODS OF THE WORKING GROUP

93. Many delegations felt the need to discuss working methods adopted by the working group which would permit timely finalization of the optional protocol.

94. During the discussion on chapter II on definitions and chapter IV on penalization, many delegations felt that the chapters should be considered together to ensure harmonization of the provisions.

95. The representative of Germany suggested that delegations should avoid discussing texts which were bracket-free unless individual delegations so wished, and that paragraphs should be declared provisionally "closed" thereby indicating broad agreement. He proposed to have a more flexible list of speakers which would allow for concentration on individual problems of the text. He was supported by the representatives of Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the observer for Australia. He also advocated a more flexible approach to the work. His latter comment was supported by the observer for the Netherlands.

96. The observer for Sweden said that the respect of the rights of the child was a cornerstone of her Government's human rights policy. She welcomed all efforts aiming at ending every form of sexual exploitation of children. In order to make progress on the optional protocol, future negotiations should focus on drafting articles of a concise and practical nature which, according to the Swedish delegation, were outlined at the 1996 Stockholm Congress. The working group should avoid including in the protocol articles that could create confusion with regard to already existing international human rights instruments, in particular the Convention on the Rights of the Child. She agreed with many other delegations that in order to fulfil the mandate of the working group, i.e. to draft an optional protocol before the year 2000, and moreover to have a protocol which States would be able to implement, a more focused and practical approach was required during the deliberations. She supported the need to harmonize chapters II and IV.

97. The observer for New Zealand suggested that the chapters or articles of the draft optional protocol should be put in order and renumbered more logically; she was supported by the representatives of Canada, France and the United Kingdom and the observer for Australia. She was in favour of flexible working methods. Advocating more active participation of NGOs in the discussions, she regretted their absence at the present session. That opinion was shared by the representatives of Canada, France, Italy, the Netherlands, and the United States of America and the observers for Australia, Egypt and the Syrian Arab Republic. In that regard, the observer for the Syrian Arab Republic drew attention to document E/CN.4/1998/WG.14/2 which contained a written contribution to the work of the group submitted by NGOs: they invited the working group to consider the issues of traffic in organs and child sex tourism.

98. The observer for New Zealand recommended that, if appropriate, the Special Rapporteur on the sale of children, child prostitution and child pornography could be asked to make a statement during a formal meeting so that her comments could be reflected in the report of the working group. That opinion was shared by the representative of Canada and the observer for Egypt.

99. In the view of the representative of Brazil, the working methods were not responsible for any progress that had or had not been achieved during the session. He was supported by the representatives of Argentina and Cuba; the latter also added that if progress had not been achieved, it was because some countries wanted to limit the scope of the protocol to sexual exploitation. This opinion was shared by the representative of Argentina. With regard to the text between square brackets, the representative of Brazil recalled that each delegation had the right to discuss any draft provision.

100. The representative of Brazil also noted that until the final adoption of the draft optional protocol as a whole, no section could be considered to be adopted. In that regard, he was supported by the representatives of Chile, Cuba and the observers for Australia, Egypt and the Syrian Arab Republic.

101. According to the representative of the United States, despite the progress achieved at the last four sessions, various key issues remained unsolved, such as the scope of the future optional protocol and the definitions. Informal meetings should be used for such discussions.

102. The representative of Cuba was in favour of harmonizing chapters II and IV, but recalled that no agreement had been reached on the way in which such harmonization would be achieved. The Commission on Human Rights should clearly establish the mandate of the working group. States parties to the Convention on the Rights of the Child had an important role to play in the implementation of that instrument in their national legislation and in the drafting of the optional protocol which should strengthen existing standards.

103. The representative of Canada suggested that the working group should adopt a work programme at the beginning of its next session which would allow enough time to consider the different chapters.

104. The observer for the Netherlands expressed her disappointment as to the lack of progress in the discussion; she recalled her submission of an alternative proposal for a definition of sale of children, child prostitution and child pornography designed to overcome existing opposition. The representative of the United Kingdom shared her disappointment.

105. The delegates of Colombia, Costa Rica and Cuba expressed their satisfaction with the working methods of the Chairman.

106. The representative of the Russian Federation stated that his delegation would prefer to adopt an additional protocol to the Convention on the Rights of the Child rather than an optional protocol. The future protocol should strengthen existing principles contained in articles 34 and 35 of the Convention, and should therefore be an additional instrument to the

Convention. The Commission on Human Rights should take a decision in that regard. The representative of Italy felt that such a proposal should be considered with interest.

107. The observer for Egypt suggested that at the end of each session the Chairman-Rapporteur should make a general assessment of the work of the working group giving a global picture of the progress made and the remaining problems; this assessment should be included in the report of the group.

108. The Chairman-Rapporteur recalled that it was not within the working group's purview to discuss its mandate, but that a debate was going on with regard to the definition of the sale of children. At earlier sessions, he had proposed to work in very informal drafting groups but that approach did not meet with the full agreement of many delegations, including those who were now advocating such a method. He was, therefore, supportive of a flexible method of work. The working group had saved time at the present session by avoiding a general debate. He hoped that the group could concentrate on the problematic issues between square brackets on the understanding that the parts without square brackets reflected a fragile consensus. He added that any delegation had the right to reconsider them if it was deemed necessary. Non-governmental organizations should participate more actively in the work of the group. As expressed by all delegations, chapters II and IV should be harmonized; however, the way in which such harmonization should be accomplished had not yet been decided. The Chairman-Rapporteur supported the Canadian proposal to adopt a programme of work at the beginning of each session. The proposal made by the Russian Federation should be considered with attention. With regard to the suggestion made by the observer for Egypt, he recalled that when presenting the report of the working group to the Commission on Human Rights, the Chairman-Rapporteur makes an assessment of the work of the group; it was therefore not the task of the working group to include such an assessment in its report.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Part 1. Texts resulting from the debates held by the working group at its fourth session

The following texts reflect the outcome of negotiations in the working group at its fourth session.

CHAPTER II. DEFINITIONS 1/ 2/

Sale of children

[Sale of children means any kind of transaction or illicit transfer, [including abduction, kidnapping, stealing, trafficking of children for the purpose of such transaction,] where the child is the object [and any part of the body of a child], regardless of the form it takes and any remuneration for it, for whatever purpose.]

OR

[Sale of children means any kind of buying and selling of a child between any person having custody or control over the child and any other person for any form of compensation or benefit with a view to the sexual exploitation of the child.]

Child prostitution

Child prostitution means the act of obtaining, [inducing, coercing,] procuring [or facilitating] the [unlawful] sexual [services] [activities] of a child for any form of consideration or benefit, [by a person, whether inside or outside that person's country of residence], [including in the context of child sex tourism].

Child pornography

Child pornography means the commercialization/trading or dissemination, or the production or possession [for the purposes of commercialization/ trading, dissemination or other illicit purpose] of any materials that constitute a representation of a child engaged in or depicted as engaged in [or used] in [explicit] sexual activity or any [illicit] representation of the

---

1/ The Working Group decided to use the phrase "practices condemned in the present protocol" to refer to matters considered in the draft optional protocol with respect to the sale of children, child prostitution, child pornography and child sex tourism, pending the result of the negotiations on the subject of definitions.

2/ If no agreement were to be reached on the proposed definitions, there is the Netherlands proposal, included in this annex as article 1.

body or part of the body of a child, the dominant characteristic of which is the depiction for a sexual purpose, [inter alia, encouraging child prostitution and child pornography, including in the context of child sex tourism].

The Netherlands proposal on definitions reads as follows:

[Article 1

1. For the purposes of this Protocol, States Parties shall define, in their legislation, sale of children, child prostitution, child pornography and [child sex tourism], in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present Protocol.

2. States Parties may in their definitions derogate from the majority age otherwise contained in their legislation.]

CHAPTER IV. PENALIZATION OF OFFENDERS AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

Penalization and prosecution

1. Each State Party shall ensure that [the use of a child in] acts referred to in (Chapter II or article...) [and connected [criminal] acts] are offences under its criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature. The same shall apply to an attempt to commit any of these offences and to an act by any person which constitutes participation in [or knowing facilitation] of such offences.

[1 bis. A corporation or any other legal person can be prosecuted consistent with the legal system of a State.]

Consideration will be given to moving the following text to the section of chapter IV dealing with protection of children/child victims:

(a) [States parties shall ensure that children who are victims of the practices condemned in the present protocol are not punished for these offences, [subject to the legal system of the State]]

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) 3/ When the alleged offender is a national of that State;

3/ The Dutch delegation proposed to insert at the end of that sentence the following wording: "taking into account the double criminality rule where appropriate;". The Norwegian delegation proposed to draft the subparagraph as follows: "(b) Outside the territory, when the alleged offender is a national of that State or a person domiciled in that State;"

(c) When the victim is a national of that State if that State considers it appropriate (article 5.1 of the Convention against Torture).

CHAPTER VI: PREVENTION, ASSISTANCE AND COMPENSATION

1. States Parties shall adopt or strengthen, and implement [and publicize] relevant laws, social policies and programmes, [including those addressing the spiritual and moral needs] to prevent the practices condemned in the present protocol. Particular attention shall be given to protect children who are specially vulnerable to these practices [,and to international cooperation whenever required to prevent them].

2. States Parties shall promote awareness in the public at large, including children, through information [by all means including mass media] and education about the [preventive measures and] harmful effects of the practices condemned in the present protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and in particular, children and child victims, in such information and education programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices condemned in the present protocol, as well as their full social reintegration, and their full physical and psychological recovery. [These shall [could], inter alia, consist of medical, social [economic] and legal assistance.]

4. States Parties shall ensure that all child victims of the practices condemned in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

Part 2. Texts left from the previous session for consideration by the working group at its next session

CHAPTER IV. PENALIZATION OF OFFENDERS AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

Penalization and prosecution

[3. States Parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging the sale of children, child prostitution and child pornography [through various means including electronic media and modern telecommunication facilities].]

Extradition

4. The offences referred to in article ... shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in these treaties.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2 (article 8 of the Convention against Torture).

5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite [its nationals] the requested State [of the national] shall take suitable measures to submit the case to its authorities with a view to determining whether sufficient grounds exist to prosecute [taking into account the double criminality rule].

Mutual judicial assistance

[States Parties shall afford one another the greatest measure of assistance in connection with [criminal] proceedings brought in respect of any of the offences referred to in article ..., including the supply of all evidence at their disposal necessary for the proceedings.]

States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them (article 9, paragraphs 1 and 2, of the Convention against Torture).

Seizure and confiscation

6. States Parties shall take all necessary and appropriate measures [for investigation and prosecution] to allow the seizure and confiscation [from persons convicted] [from the offenders] of the gains from the offences described in article ... [specifically funds, property, equipment and other assets used by those persons to commit or promote the commission of those offences] consistent with due process and other applicable laws.

Protection of [children] [child victims]

2. States Parties shall adopt all appropriate measures to protect the interests of child victims of the sale of children, child prostitution, child pornography and child sex tourism throughout the criminal proceedings, in particular by:

(a) Protecting the right to privacy of these victims, in particular by ensuring the [non-] [availability of measures to avoid] dissemination of information that could lead to the identification of such child victims;

(b) Facilitating the testimony of these victims through appropriate measures [and ensuring that these victims are not further victimized by these proceedings];

(c) Ensuring that the views or concerns of these victims shall be brought to the attention of the court, where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

[(d) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(e) Providing proper assistance to child victims throughout the legal process;

(f) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.]

4. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations including investigations aimed at establishing the age of the victim.

6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of these practices.

CHAPTER V. INTERNATIONAL COOPERATION AND COORDINATION

Article A

States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Article C

States Parties shall promote cooperation between their authorities and [relevant] [national and international non-governmental organizations] and international organizations with a view to the implementation of the purposes of the present Protocol.

[Article E

States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective [in eliminating the

consumer market that nurtures] [in order to fight] [the increase in] the sale of children, child prostitution, child pornography [and child sex tourism] [on the basis of the principle of collective responsibility].]

Article F

[States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism.]

Article G

States Parties shall ensure the implementation and strengthening of measures against the practices referred to in the present Protocol, including the protection against cross-border trafficking, and providing special arrangements for the assistance, repatriation and reintegration of child victims, when appropriate.

[Article H

States Parties shall ensure international cooperation to assist children especially from developing countries for their repatriation and reintegration, in particular by providing financial aid.]

PREAMBLE (FORMER CHAPTER III. IMPLEMENTATION OF PERTINENT INSTRUMENTS)

Proposal submitted by the delegation of the United States of America acting as coordinator

Emphasizing the importance of preventing and eradicating the sale of children, child pornography and child prostitution through effective national legislation and domestic measures, including measures aimed at minimizing access to and dissemination of materials promoting the sale of children, child pornography and child prostitution, through written, visual, or modern telecommunication and electronic media,

Stressing the continuing need for effective implementation by States of relevant international legal instruments relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party,

Giving due regard to the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the other relevant decisions and recommendations of pertinent international bodies,

Encouraging appropriate activities of, and cooperation with, relevant international and non-governmental organizations, with respect to the sale of children, child pornography and child prostitution, in line with their respective national legislation,

Recalling that in the Convention on the Rights of the Child, States Parties undertook to protect the child from all forms of sexual exploitation and sexual abuse,

Bearing in mind that the majority of the child victims in the sale of children, child prostitution and child pornography are from developing countries,

Believing that the elimination of the consumer market will effectively reduce the sale of children, child prostitution and child pornography,

Recognizing that while poverty or underdevelopment create an environment which may lead to child exploitation, the sale of children, child prostitution and child pornography cannot under any circumstances be justified by reason of such poverty or underdevelopment,

Recognizing the need to address the root causes contributing to the vulnerability of the child to sale of children, child prostitution and child pornography, including poverty and underdevelopment,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing the transborder nature of prevailing practices that promote the commercial sexual exploitation of children,

Emphasizing in this regard the importance of establishing effective international cooperation, including bilateral, multilateral and regional arrangements, providing for penalization, prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography,

Emphasizing that nothing in this Protocol prejudices the legitimate adoption of children consistent with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,

Recognizing that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Proposal submitted by Denmark

Keeping in mind that any person regarding whom proceedings are brought in connection with any of the offences referred to above should be guaranteed fair treatment at all stages of the proceedings (article 7, paragraph 3 of the Convention against Torture).

Proposal submitted by the delegation of Australia acting as a coordinator for Chapter V

Encouraging States Parties to work to ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved,

Encouraging States Parties also to take all reasonable steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishment of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child,

Considering that States Parties should strengthen cooperation in providing assistance, rehabilitation and repatriation where this is appropriate to child victims of sale, prostitution and pornography,

Considering also that States Parties should take all feasible measures, through bilateral and multilateral cooperation and on the basis of collective responsibility, to eliminate the sale of children, child prostitution and child pornography,

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

CHAPTER VIII. OTHER MATTERS

Proposal submitted by the Islamic Republic of Iran on the structure of the protocol

The following issues would be placed under chapter I entitled "General provisions":

A. Definitions

As adopted by the working group

B. An independent article

Nothing in this Protocol shall be interpreted in a manner to affect the right of each State to take any appropriate measures aimed at combating sale of children, child prostitution and child pornography.

C. Non-discrimination (as contained in document E/CN.4/1995/95, annex I)

The provisions of a possible optional protocol should be implemented without discrimination of any kind as set forth in article 2 of the Convention on the Rights of the Child.

D. Reservations (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should consider the question of reservations.

E. Reporting (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should contain a provision relating to the inclusion of information regarding the implementation of the protocol in the regular reports submitted by States who are party to the Optional Protocol to the Committee on the Rights of the Child, pursuant to article 44 of the Convention on the Rights of the Child.